

Private foundation, animal clinic. An exempt organization that maintains a free clinic for animals does not qualify as a hospital or an organization that provides medical or hospital care within the meaning of section 170(b)(1)(A)(iii) of the Code and is a private foundation.

Advice has been requested whether the organization described below is described in section 170(b)(1)(A)(iii) of the Internal Revenue Code of 1954, and, therefore, is not a private foundation by reason of section 509(a)(1).

The organization maintains a free clinic for animals that has been previously recognized to be exempt from Federal income tax under section 501(c)(3) of the Code. It is not a publicly supported organization described in section 170(b)(1)(A)(vi).

Section 509(a) of the Code provides that the term 'private foundation' means a domestic or foreign organization described in section 501(c)(3) other than an organization described in sections 509(a)(1), (2), (3), or (4). The organizations coming within section 509(a)(1) are those described in clauses (i) through (vi) of section 170(b)(1)(A).

Section 170(b)(1)(A)(iii) of the Code covers hospitals or organizations whose principal purpose or function is the providing of medical or hospital care.

Section 1.170A-9(c) of the Income Tax Regulations provides that the term 'medical care' shall include the treatment of any physical or mental disability or condition, whether on an inpatient or outpatient basis, provided the cost of such treatment is deductible under section 213 by the person treated. Therefore, this section contemplates only those hospitals or organizations that provide medical or hospital care for humans.

The organization in the instant case is providing medical care for animals rather than for humans. Accordingly, it does not meet the requirements of section 170(b)(1)(A)(iii) of the Code and is a private foundation.